

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
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JEREMY M. BERMAN
(312) 252-1510
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226130

Phone: (312) 252-1500
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December 7, 2009

VIA FEDERAL EXPRESS

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

FILED

DEC - 8 2009

**SURFACE
TRANSPORTATION BOARD**

Re: **Docket No. AB-1054X**
Northern Plains Railroad, Inc.--Discontinuance of Service Exemption--
In Ramsey and Benson Counties, North Dakota

Dear Chief Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Notice of Exemption of Northern Plains Railroad, Inc. Pursuant to 49 C.F.R. § 1152.50**, dated December 7, 2009. A check in the amount of \$3,700.00, representing the appropriate fee for this filing, is attached.

One extra copy of the Notice and this letter also are enclosed. Please date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

FEE RECEIVED

DEC - 8 2009

**SURFACE
TRANSPORTATION BOARD**

Jeremy M. Berman
Attorney for Northern Plains Railroad, Inc.

Enclosures

ENTERED
Office of Proceedings

DEC - 8 2009

**Part of
Public Record**

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1054X

NORTHERN PLAINS RAILROAD, INC.
-- DISCONTINUANCE OF SERVICE EXEMPTION --
IN RAMSEY AND BENSON COUNTIES, NORTH DAKOTA



226130

NOTICE OF EXEMPTION OF
NORTHERN PLAINS RAILROAD, INC.
PURSUANT TO 49 C.F.R. § 1152.50

ENTERED
Office of Proceedings

DEC - 8 2009

Part of
Public Record

FILED
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SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
DEC - 8 2009
SURFACE
TRANSPORTATION BOARD

William C. Sippel
Jeremy M. Berman
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

ATTORNEYS FOR NORTHERN PLAINS
RAILROAD, INC.

Dated: December 7, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1054X

NORTHERN PLAINS RAILROAD, INC.
-- DISCONTINUANCE OF SERVICE EXEMPTION --
IN RAMSEY AND BENSON COUNTIES, NORTH DAKOTA

**NOTICE OF EXEMPTION OF
NORTHERN PLAINS RAILROAD, INC.
PURSUANT TO 49 C.F.R. § 1152.50**

Northern Plains Railroad, Inc. ("NPR") hereby submits this Notice of Exemption pursuant to 49 C.F.R. Part 1152, Subpart F, to discontinue service on a line of railroad owned by Soo Line Railroad Company d/b/a Canadian Pacific Railway ("CPR") and leased and operated by NPR in Ramsey and Benson Counties, North Dakota, referred to herein as the "Line," between milepost 446.0, in Devils Lake, Ramsey County, North Dakota and milepost 472.24 in Harlow, Benson County, North Dakota, a distance of 26.24 miles.

In accordance with the requirements of 49 C.F.R. § 1152.50(d)(2), NPR submits the following information:

General Corporation Information: 49 C.F.R. § 1152.22(a)(1)-(2)

NPR is a Class III rail carrier which currently leases from CPR and operates approximately 388 miles of rail line in North Dakota and Minnesota. NPR also operates approximately 69.15 miles of line in North Dakota owned by Mohall Central Railroad, Inc.

The complete name and address of NPR is:

Northern Plains Railroad, Inc.
100 Railroad Avenue
Fordville, North Dakota 58231

Relief Sought: 49 C.F.R. § 1152.22(a)(3)

Pursuant to the Board's class exemption for discontinuance of service, codified at 49 C.F.R. Part 1152. Subpart F. NPR intends to discontinue service over a portion of line of railroad operated by NPR between milepost 446.0, in Devils Lake, Ramsey County, North Dakota and milepost 472.24 in Harlow, Benson County, North Dakota, a distance of 26.24 miles. NPR obtained lease and operation authority for the Line in Northern Plains Railroad, Inc. – Lease and Operation Exemption – Certain Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway, Finance Docket No. 33324 (STB served January 9, 1997).

CPR has sought and obtained abandonment authority for the Line in Soo Line Railroad Company – Abandonment Exemption – In Ramsey and Benton Counties, ND, Docket No. AB-57 (Sub-No. 54X) (STB served October 22, 2004).¹

Map: 49 C.F.R. § 1152.22(a)(4)

A map of the line to be abandoned is attached hereto as Exhibit A.

NPR'S Representative: 49 C.F.R. § 1152.22(a)(7)

NPR's representative to whom correspondence regarding this abandonment should be sent is:

Jeremy M. Berman
Fletcher & Sippel LLC
29 N. Wacker Dr., Suite 920
Chicago, IL 60606
312-252-1500

¹ The line abandoned by CPR in Docket No. AB-57 (Sub-No. 54X) was approximately two miles longer than the Line leased by NPR. On January 17, 2007, CPR filed a consummation notice for its abandonment of the line in Docket No. AB-57 (Sub-No. 54X). Because of NPR's lease rights on the Line, CPR cannot proceed with abandonment of the Line until NPR's rights are discontinued. CPR will resubmit its consummation notice for the Line once the regulatory barrier imposed by the Board's October 10, 2004 decision has been satisfied by NPR's consummation of the discontinuance authority obtained in this proceeding.

ZIP Codes Traversed: 49 C.F.R. § 1152.22(a)(8)

The portion of the Line to be abandoned traverses United States Postal Service ZIP Codes 58301, 58362, 58325, 58351 and 58346.

Qualification for Class Exemption: 49 C.F.R. § 1152.50(b)

Per the certificate and verification attached hereto as Exhibit B, NPR certifies that no local revenue traffic has moved over the Line for at least the last two years, there is no overhead traffic to be rerouted on the stub-ended Line, and no formal complaint filed by a user of rail service on the Line (or a state or local governmental entity acting on behalf of such user) regarding cessation of service is pending with the Board or any U.S. District Court or has been decided in favor of the complainant during the last two years.

Consummation Date: 49 C.F.R. § 1152.50(d)(2)

NPR will not consummate the proposed discontinuance any earlier than January 27, 2010.

Suitability for Other Public Purposes: 49 C.F.R. § 1152.22(e)(4)

Because this is a discontinuance, trail use / rail banking and other public use conditions are not appropriate.²

Labor Protection: 49 C.F.R. 1152.50(d)(2)

The level of labor protection applicable in rail line abandonments is that established in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

² See, e.g., R.J. Corman Railroad Company/Tennessee Terminal, LLC – Discontinuance of Service Exemption – In Shelby County, TN, Docket No. AB-1042X (STB served September 16, 2009); Tulare Valley Railroad Company – Discontinuance of Service Exemption – In Tulare County, CA, Docket No. AB-397 (Sub-No. 6X) (STB served April 17, 2009); Mid-Michigan Railroad, Inc. – Discontinuance of Service Exemption – In Kent And Ottawa Counties, MI, Docket No. AB-364 (Sub-No. 15X) (STB served March 3, 2009).

Certificate of Compliance with Notice Requirements: 49 C.F.R. § 1152.50(d)(2)

A certificate that the notice requirements of 49 C.F.R. § 1152.50(d)(1) have been complied with and that, in accordance with 49 C.F.R. § 1105.12, NPR has published notice of the proposed discontinuance in a newspaper of general circulation in each county through which the Line passes is attached hereto as Exhibit C. Because NPR is proposing to discontinue service on the Line, and not abandon the Line, the notice requirement of 49 C.F.R. § 1105.11 do not apply.³

Environmental and Historic Report: 49 C.F.R. §§ 1105.7 and 1105.8

Because NPR is proposing to discontinue service on the Line, and not abandon the Line, no environmental or historic report is required.⁴ An environmental and historic review was conducted in connection with CPR's proposed abandonment of the Line in Docket No. AB-57 (Sub-No. 54X).

Respectfully submitted,

By: 

William C. Sippel
Jeremy M. Berman
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR NORTHERN PLAINS
RAILROAD, INC.**

Dated: December 7, 2009

³ See footnote 2.

⁴ See footnote 2.

Exhibit A – Map

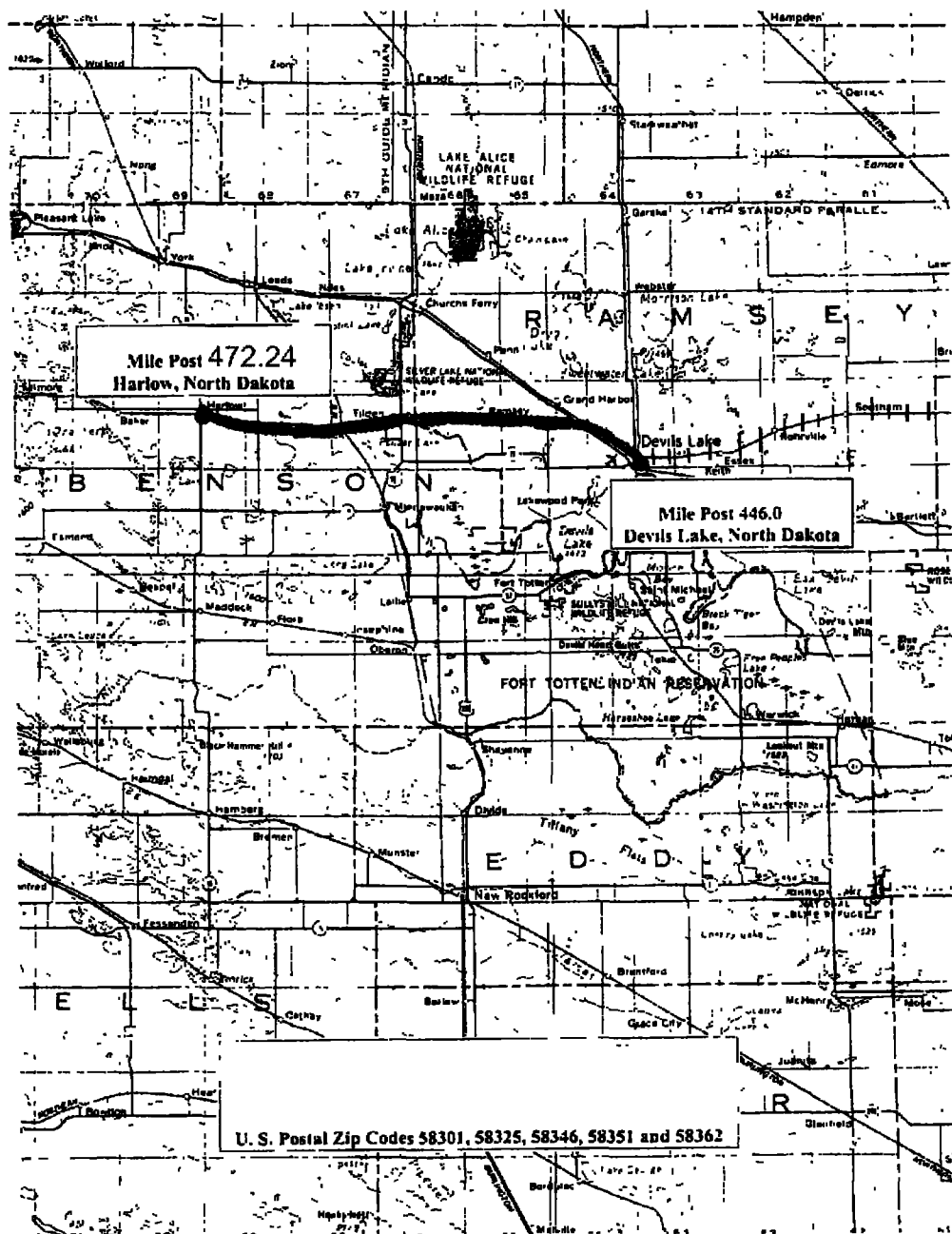


Exhibit B – Certificate and Verification

DOCKET NO AB-1054X

**NORTHERN PLAINS RAILROAD, INC.
- DISCONTINUANCE OF SERVICE EXEMPTION -
IN RAMSEY AND BENSON COUNTIES, NORTH DAKOTA**

**CERTIFICATE AND VERIFICATION THAT RAIL LINE MEETS
CRITERIA OF 49 C.F.R. SECTION 1152.50(b)**

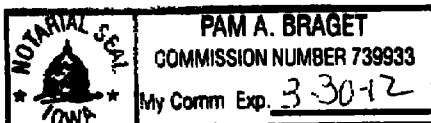
STATE OF IOWA)
) ss
COUNTY OF CERRO GORDO)

Gregg Haug, being duly sworn, deposes and says

1. That I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate to the best of my knowledge, information and belief.
2. That no local traffic has moved over the line of railroad owned by Soo Line Railroad Company d/b/a Canadian Pacific Railway and leased and operated by Northern Plains Railroad, Inc. from milepost 446.0, in Devils Lake, Ramsey County, North Dakota to milepost 472.24 in Harlow, Benson County, North Dakota, a distance of 26.24 miles, for at least two years, and that there is no overhead traffic to be rerouted over other lines; and
3. That no formal complaint filed by a user of rail service on the subject line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line is either pending with the Surface Transportation Board or any U.S. District Court or has been decided in favor of the complainant within the last two years; and

Dated: November 25, 2009

Pam A. Braget



Gregg Haug
Gregg Haug
Northern Plains Railroad, Inc.

Subscribed and sworn to before me
this 25th day of November, 2009

Exhibit C—Certificate of Compliance

DOCKET NO. AB-1054X

NORTHERN PLAINS RAILROAD, INC.
-- DISCONTINUANCE OF SERVICE EXEMPTION --
IN RAMSEY AND BENSON COUNTIES, NORTH DAKOTA

CERTIFICATE OF COMPLIANCE WITH 49 C.F.R. §§ 1105.12 and 1152.50(d)(1)

I hereby certify that on November 24, 2009, Northern Plains Railroad, Inc. complied with the notice requirements of 49 C.F.R. § 1152.50(d)(1). Copies of the notices are included as Attachment A to this certificate.

I also certify that newspaper notices were published in the *Devils Lake Daily Journal* on December 1, 2009 and in the *Benson County Farmers Press* on December 2, 2009. The notices alerted the public to the proposed abandonment, to possible reuse alternatives, and to procedures for participating in the STB proceeding. Affidavits of publication received to are attached to this certificate as Attachment B.

Dated this 7th day of December, 2009.


Jeremy M. Berman
Counsel for Northern Plains Railroad, Inc.

Attachment A – 10 Day Letters

FLETCHER & SIPPEL LLC

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Chicago, Illinois 60606-2832

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JEREMY M. BERMAN
(312) 252-1510
jberman@fletcher-sippel.com

November 24, 2009

Recreation and Conservation
National Park Service
1849 C Street, NW
Washington, D.C. 20240

Re: Docket No. AB-1054X – Northern Plains Railroad, Inc. Discontinuance of Service Exemption - In Ramsey and Benson Counties, North Dakota

Dear Sir/Madam:

This is to inform you that pursuant to 49 C.F.R. § 1152.50 (Exempt Abandonments and Discontinuance of Service and Trackage Rights), Northern Plains Railroad, Inc. shall on or after December 4, 2009, file a Notice of Exemption with the Surface Transportation Board for approval to discontinue service on a 26.24 mile line of railroad between milepost 446.0, in Devils Lake, Ramsey County, North Dakota and milepost 472.24 in Harlow, Benson County, North Dakota. Such line runs through U.S. Postal Zip Codes 58301, 58362, 58325, 58351 and 58346. A map of the line is enclosed.

The exemption procedures set forth in § 1152.50 are being used in this case because no local traffic has moved over this line for at least two years and there is no overhead traffic that would have to be rerouted over other lines. Should you have any questions or need additional information regarding this proposed discontinuance feel free to contact me at 312-252-1510.

Very truly yours,



Jeremy M. Berman
Northern Plains Railroad, Inc.

Encl.

FLETCHER & SIPPEL LLC

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JEREMY M. BERMAN
(312) 252-1510
jberman@fletcher-sippel.com

November 24, 2009

Military Surface Deployment & Distribution Command
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National Defense)
709 Ward Drive, Building 1990
Scott AFB, IL 62225-5357

Re: Docket No. AB-1054X – Northern Plains Railroad, Inc. – Discontinuance of Service Exemption – In Ramsey and Benson Counties, North Dakota

Dear Sir/Madam,

This is to inform you that pursuant to 49 C.F.R. § 1152.50 (Exempt Abandonments and Discontinuance of Service and Trackage Rights), Northern Plains Railroad, Inc. shall on or after December 4, 2009, file a Notice of Exemption with the Surface Transportation Board for approval to discontinue service on a 26.24 mile line of railroad, between milepost 446.0, in Devils Lake, Ramsey County, North Dakota and milepost 472.24 in Harlow, Benson County, North Dakota. Such line runs through U.S. Postal Zip Codes 58301, 58362, 58325, 58351 and 58346. A map of the line is enclosed.

The exemption procedures set forth in § 1152.50 are being used in this case because no local traffic has moved over this line for at least two years and there is no overhead traffic that would have to be rerouted over other lines. Should you have any questions or need additional information regarding this proposed discontinuance feel free to contact me at 312-252-1510.

Very truly yours,



Jeremy M. Berman
Northern Plains Railroad, Inc.

Encl.

FLETCHER & SIPPEL LLC

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JEREMY M. BERMAN
(312) 252-1510
jberman@fletcher-sippel.com

November 24, 2009

Mr. Tom Tidwell
Chief of the Forest Service
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250-0003

Re: Docket No. AB-1054X – Northern Plains Railroad, Inc. – Discontinuance of Service Exemption – In Ramsey and Benson Counties, North Dakota

Dear Mr. Tidwell:

This is to inform you that pursuant to 49 C.F.R. § 1152.50 (Exempt Abandonments and Discontinuance of Service and Trackage Rights), Northern Plains Railroad, Inc. shall on or after December 4, 2009, file a Notice of Exemption with the Surface Transportation Board for approval to discontinue service on a 26.24 mile line of railroad between milepost 446.0, in Devils Lake, Ramsey County, North Dakota and milepost 472.24 in Harlow, Benson County, North Dakota. Such line runs through U.S. Postal Zip Codes 58301, 58362, 58325, 58351 and 58346. A map of the line is enclosed.

The exemption procedures set forth in § 1152.50 are being used in this case because no local traffic has moved over this line for at least two years and there is no overhead traffic that would have to be rerouted over other lines. Should you have any questions or need additional information regarding this proposed discontinuance feel free to contact me at 312-252-1510.

Very truly yours,


Jeremy M. Berman
Northern Plains Railroad, Inc.

Encl.

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jberman@fletcher-sippel.com

November 24, 2009

North Dakota Department of Transportation - Planning
608 E. Boulevard Avenue
Bismarck, ND 58505-0700

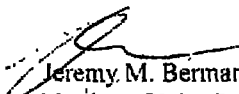
Re: Docket No. AB-1054X - Northern Plains Railroad, Inc. - Discontinuance of Service Exemption - In Ramsey and Benson Counties, North Dakota

Dear Sir/Madam:

This is to inform you that pursuant to 49 C.F.R. § 1152.50 (Exempt Abandonments and Discontinuance of Service and Trackage Rights), Northern Plains Railroad, Inc. shall on or after December 4, 2009, file a Notice of Exemption with the Surface Transportation Board for approval to discontinue service on a 26.21 mile line of railroad between milepost 446.0, in Devils Lake, Ramsey County, North Dakota and milepost 472.21 in Harlow, Benson County, North Dakota. Such line runs through U.S. Postal Zip Codes 58301, 58362, 58325, 58351 and 58346. A map of the line is enclosed.

The exemption procedures set forth in § 1152.50 are being used in this case because no local traffic has moved over this line for at least two years and there is no overhead traffic that would have to be rerouted over other lines. Should you have any questions or need additional information regarding this proposed discontinuance feel free to contact me at 312-252-1510.

Very truly yours,


Jeremy M. Berman
Northern Plains Railroad, Inc.

Encl.

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November 24, 2009

North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

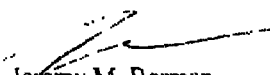
Re: Docket No. AB-1054X – Northern Plains Railroad, Inc. - Discontinuance of Service Exemption – In Ramsey and Benson Counties, North Dakota

Dear Sir/Madam:

This is to inform you that pursuant to 49 C.F.R. § 1152.50 (Exempt Abandonments and Discontinuance of Service and Trackage Rights), Northern Plains Railroad, Inc. shall on or after December 4, 2009, file a Notice of Exemption with the Surface Transportation Board for approval to discontinue service on a 26.24 mile line of railroad between milepost 446.0, in Devils Lake, Ramsey County, North Dakota and milepost 472.24 in Harlow, Benson County, North Dakota. Such line runs through U.S. Postal Zip Codes 58301, 58362, 58325, 58351 and 58346. A map of the line is enclosed.

The exemption procedures set forth in § 1152.50 are being used in this case because no local traffic has moved over this line for at least two years and there is no overhead traffic that would have to be rerouted over other lines. Should you have any questions or need additional information regarding this proposed discontinuance feel free to contact me at 312-252-1510.

Very truly yours,


Jeremy M. Berman
Northern Plains Railroad, Inc.

Encl.

Attachment B – Affidavits of Publication

Affidavit of Publication

COUNTY OF BENSON)
)SS
STATE OF NORTH DAKOTA)

Richard M. Peterson of said County and State, being first duly sworn on his oath, says: That the Benson County Farmers Press is a legal weekly newspaper of general circulation, printed and published in the City of Minnewaukan, in said County and State, by Richard M. Peterson, and has been such newspaper during the time hereinafter mentioned; and that I, Richard M. Peterson, the undersigned, am publisher and during all such times have been publisher of said newspaper, and that the advertisement headed

NOTICE OF INTENT TO DISCONTINUE RAIL SERVICE

Northern Plains Railroad Inc

a copy of which is hereunto attached, was printed and published in the said Benson County Farmers Press for 1 week to wit:

Dec 02, 2009 _____, 2009 _____, 2009

_____, 2009 _____, 2009 _____, 2009

that the full amount of the legal fee for publication of the annexed notice inures solely to the benefit of the publisher of the Benson County Farmers Press, that no agreement for understanding for a division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.

First insertion line rate
of .67 per line times 57 lines of straight matter \$ 38.19

Subsequent line rate
of .67 per line times _____ lines of straight matter
times _____ insertions \$ _____

First insertion inch rate
of \$5.50 times _____ columns times depth of _____
inches times _____ subsequent insertions \$ _____

TOTAL PUBLISHER'S FEE \$ 38.19

Richard M. Peterson

Richard M. Peterson

Subscribed and sworn to before me this 2nd day of Dec, 2009.

Karen T. Kenner
Karen T. Kenner, Notary Public N.D.
My Commission Expires Nov. 2, 2012

KAREN T. KENNER
Notary Public
State of North Dakota
My Commission Expires Nov. 2, 2012

NOTICE OF INTENT TO DISCONTINUE RAIL SERVICE
Northern Plains Railroad, Inc. ("NPR") gives notice that on or about December 4, 2009, it intends to file with the Surface Transportation Board, Washington, DC 20423, a notice of exemption under 49 CFR 1152 Subpart F -- Exempt Abandonments permitting discontinuance NPR's overhead trackage rights on approximately 26.24 miles of rail line of Canadian Pacific Railway, between milepost 446.0, near Devils Lake, Ramsey County and milepost 472.24 near Harlow, Benson County, North Dakota which traverses through United States Postal Service ZIP Codes 58301, 58362, 58325, 58351 and 58345 in Ramsey and Benson Counties, North Dakota. The proceeding will be docketed as NO AB-1054X. The proposed discontinuance is exempt from the Board's environmental and historic reporting requirements. 49 C.F.R. 1105.6(c) and 1105.8(b). Interested persons may make inquiries regarding environmental matters by writing to the Section of Environmental Analysis, Surface Transportation Board, Washington, DC 20423 or by calling that office at 202-245-0245. Appropriate offers of financial assistance to continue rail service can be filed with the Board. Public use conditions and rail banking/trails use are not available in proceedings involving only a discontinuance and not an abandonment. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Section of Administration, Office of Proceedings, 395 E Street, SW., Washington, DC 20423-0001 (See 49 CFR 1104.1(a) and 1104.3(a)), and one copy must be served on applicant's representative (See 49 CFR 1104.12(a)). Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at 202-245-0238. Copies of any comments or requests for conditions should be served on the NPR's representative: Jeremy Berman, Fletcher & Suppe LLC, 29 N. Wacker Dr., Suite 920, Chicago, IL 60606.